

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, DC 20554

In the Matter of

Preserving the Open Internet

Broadband Industry Practices

Notice of Proposed Rulemaking

GN Docket No. 09-191

WC Docket No. 07-52; FCC 09-93

Comments of The Heartland Institute

Introduction

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Heartland's mission is to discover, develop, and promote free-market solutions to social and economic problems. Such solutions include parental choice in education, choice and personal responsibility in health care, market-based approaches to environmental protection, privatization of public services, and deregulation in areas where property rights and markets do a better job than government bureaucracies.

These comments are attributable only to the signatories.

1. A Solution in Search of a Problem

Few would argue that maintaining a "free and open Internet" is not a laudable goal. Indeed, maintaining a "free and open Internet" has become a slogan of advocates of net neutrality frequently repeated publicly by Federal Communications Commission Chairman Julius Genachowski. Network neutrality often is framed as a matter of free speech rights that are violated when network providers discriminate among messages based on their origin or content. But experience has exposed these fears as unrealistic.

Talk of a "free" and "open" Internet is more clever than accurate. While the term "neutrality" connotes passivity, what the neutralists actually desire is a more activist government imposing more control over the Internet – replacing the free market and the millions of individual choices consumers and businesses make every day with the wisdom of a handful of bureaucrats.

Neutralists insist the adoption of proprietary, exclusionary business models must be outlawed. But letting bureaucrats move in now to micromanage what free market capitalism has created makes little sense. The profit motive, not exploitation, has moved America's largest ISPs to invest more than \$200 billion in broadband and wireless build-out in the last few years. Only ideologues blind to this reality would believe greater innovations await us if only we destroy the system that created the technological wonders that we now take for granted. This radical outlook should not be endorsed, let alone enforced, by the FCC.

An Internet and wireless industry forced to dance to the ever-changing tunes of government bureaucrats would be less vibrant, less innovative and less free for everyone who plugs in.

Advocates of network neutrality regulations seem blind to the need for a regulatory environment that protects and rewards the private investments needed to deliver high-quality broadband service to growing numbers of people. Net neutrality proponents also confuse the motivation of market players in the Internet economy, forgetting that content and conduit are naturally separate.

As Hance Haney and George Gilder recently explained: "If you have the best content, you want it on everyone's conduit, and if you have the best conduit, you want everyone's content on it. There are no synergies between creating attractive and original content and building powerful and available broadband networks. The most profitable product in cable is not TV but open Internet service. The market will continue to push phone and cable companies to provide consumers with more choice, not less."

2. Broadband is Not a Public Utility, and Should Never Be One

Proponents of net neutrality know they cannot have their way on the Internet all at once, so the strategy is to achieve the goal of a socialist, government-run system incrementally. That journey begins by convincing the public that the private telecommunications and cable companies that currently deliver broadband access ought to be regulated the same way as electric and water utilities. However, data and evidence make a compelling case that the public utility model of regulation is inappropriate for broadband.

Broadband fails to fit the standard utility model in many ways. For instance, conventional utilities are based on single-use-facility, while broadband provider facilities are multi-use. The converged telecom plant offers phone, wireless, high-speed and video; the converged cable plant offers video, phone, high-speed, and increasingly wireless; the converged wireless plant offers wireless, high-speed and video; and the converged satellite plant increasingly offers video and high speed. And unlike utility services, broadband network congestion can cause latency problems for voice or real-time services and jitter quality problems for video or high bandwidth applications.

The public utility model isn't even consistent with the neutralists' own ideas and arguments. Many of these same people who want to turn the current 'dumb' electrical grid into a 'smart' electrical grid want to turn the current 'smart' broadband grid into a 'dumb' end-to-end network grid. Equally confounding and contradictory, many of the proponents who want broadband to be regulated as a public utility don't want broadband to be usage-priced like public utilities are.

3. Let the Market Work in the Wireless Sector

The net neutrality advocates have had to jigger the arguments they use against wireline phone and cable companies to make them work against the emerging wireless broadband sector – all the while carefully ignoring that the sector's very existence is evidence of the competition and innovation they claim is suppressed by the status quo. Not only does neutralism not work as a model for understanding the wireless sector, the attempt by neutralists to apply network neutrality to the wireless sector demonstrates the negative consequences of that flawed policy prescription.

Slow-moving government processes are generally antithetical to creating an environment conducive to innovation. History shows that allowing consumers to choose the best technologies – by voting everyday with their pocketbooks in the fast-paced marketplace – fuels the most innovation. The idea that slow-moving government regulation could be the enabling source of fast-paced market innovation in the wireless sector defies both common sense and the vast evidence of the last 15 years of fierce wireless competition in the marketplace.

4. The Radical Philosophy behind Network Neutrality

In the simplest terms, neutralists see digital information and communications networks as a public commons, such as a park or an interstate highway. They oppose the idea – actually, the reality – that broadband networks, software, and content should be privately owned or operated by private companies competing for customers.

Neutralists take for granted the enormous investments made by private companies in hardware, software, content, marketing, and consumer services. They look at the digital economy and see the

conditions they believe are necessary for a more egalitarian common ownership of the means of production and distribution of data, or in short, the nationalization or socialization of the Internet.

The devoutly anti-capitalist neutralists cling to a socialist dream in which the wonders of technology will continue to emerge from a "digital commons," even though their policy prescriptions would destroy the incentives to profit from that labor. They do this by setting up a series of straw men such as the idea that Big Business exerts complete control over the Internet and its products, and that "decentralized" creativity cannot flourish in a market.

5. Conclusion

Net neutrality is more than a just the latest contentious public policy issue in Washington. It is the public branding of a radical ideology which is most logically called "neutralism." The neutralists call for a new "digital commons" free of private property rights and profit-making opportunities is deeply at odds with the existing market-based model of Internet investment and management.

Neutralism is rooted in the fetid swamps of Marxist thought. From the founding of the "copyleft" movement, to the publication of The dotCommunist Manifesto, to modern attempts to foist net neutrality upon the Web and wireless technology, the neutralists have made their aims clear. "Big Business" must be brought to its knees all the better to pray for mercy (or at least permission to operate) from government bureaucrats who will replace the free market in deciding how broadband networks are run and how content will flow.

The regulations envisioned by neutralists would imperil the greatest communications and commerce tool ever developed by man. The Internet may have emerged from the womb of government, but it has grown up to become the technological wonder we know today because it was largely free of government meddling. The goals of universal broadband access and the neutralists are near polar opposite goals, because universal broadband is all about expanding "the pie," and neutralists are all about dictating allocation of the current pie pieces without regard to rewarding those who baked the pies in the first place.

Respectfully submitted,

James G. Lakely
Co-director, The Center on the Digital Economy
The Heartland Institute
Chicago, Illinois
(312) 377-4000